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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,459	09/10/2003	Jeremy A. Schmoll	3788.52US01	7150

7590 05/13/2005

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EXAMINER

MAUST, TIMOTHY LEWIS

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/661,459

Applicant(s)

SCHMOLL ET AL.

Examiner

Timothy L Maust

Art Unit

3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 20-30 and 42-48 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 33-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ~~9/19/03~~ 2/25/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-19 and 33-41, in the reply filed on 3/24/05 is acknowledged.

Drawings

The drawings filed on 9/10/03 are informal, since the letters and numbers are not uniform in nature throughout the Figures.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3, 8, 10-12, 14, 18, 19 and 33-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Sus et al.

In regard to claims 1, 33 and 38, the Sus et al. reference discloses an "apparatus" (Figure 3) for dispensing food articles, said apparatus comprising a "first

hopper" 204, a "first accumulator" 210, a "door" 220 and a "cooling device" 202 (refrigerator), as claimed.

In regard to claims 2, 3, 39 and 40, see "load/weight sensing/measuring assembly" (210, 216) in Figure 4.

In regard to claims 8 and 19, see "second hopper" 205 and a "second accumulator" (similar to accumulator 210).

In regard to claims 10-12, 14 and 18, see column 14, lines 4 and 5.

In regard to claim 41, each hopper is capable of holding different foods.

In regard to claims 34-37, the method as claimed would be inherent during normal use and operation of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sus et al. in view of Mack et al.

The Sus et al. reference discloses the invention substantially as claimed (discussed supra) but does not disclose the cooling device being a coldwall evaporator. However, the Mack et al. discloses a refrigerator having a coldwall evaporator 17. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

was made to modify the Sus et al. device to have a coldwall evaporator, if not already, in view of the teachings of the Mack et al. reference wherein so doing would amount to mere substitution of one functional equivalent refrigeration system for another within the same art and the selection of any of these refrigeration systems would work equally well in the Sus et al. device.

Claims 1-7, 9-12, 14-17 and 33-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritze et al. ('622) in view of Sus et al.

The Fritze et al. reference discloses an "apparatus" (Figure 2) for dispensing food articles, said apparatus comprising a "first hopper" 21, a "first accumulator" 36, a "door" 32, a "load/weight sensing/measuring assembly" 165, a rotating reversible "drum" 51 and "controls" 56-62, but does not disclose a "cooling device". However, the Sus et al. (discussed supra) discloses a similar apparatus and a "refrigerator" 202 to maintain frozen food at a certain temperature. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Fritze et al. device to have a refrigerator around hopper 21 in view of the teachings of the Sus et al. reference in order to keep frozen food stuff at a desired temperature.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Tue. - Thur. 6:30 - 5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Timothy L Maust
Primary Examiner
Art Unit 3751

Tlm
5/5/05